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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MICHAEL BACOCK,

Plaintiff and Respondent,

v.

MANIFEST GENESIS HOLDINGS, INC.,  
et al.,

Defendants and Appellants.

A143826

(Contra Costa County  
Super. Ct. No. CIVMSN13-1174)

Plaintiff Michael Babcock entered into a settlement agreement with Manifest Genesis Holdings, Inc. (Manifest), Boresha International, Inc. (Boresha), and Virtues of Coffee, Inc. (Virtues) (collectively, the Manifest Parties). After Manifest failed to pay the amount due under the settlement agreement, plaintiff moved to enforce its terms. The trial court granted the motion and entered judgment against the Manifest Parties. The Manifest Parties now appeal, arguing the trial court erred because only Manifest, not Boresha or Virtues, was obligated to pay plaintiff.<sup>1</sup> We disagree and affirm.

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<sup>1</sup>It is unclear how Manifest has standing to appeal the trial court's order as it relates to Boresha and Virtues, unless there is some unity of interest between the three parties. Yet the Manifest Parties' position on appeal appears to be that they are three distinct entities. As plaintiff has not argued Manifest lacks standing, Boresha and Virtues clearly have standing to appeal, and we affirm the trial court's judgment, we decline to further address the standing issue.

## **I. BACKGROUND**

Manifest is the holding company for Boresha and Virtues. Boresha is a distributor of coffee, tea, and health products. Virtues operates a roasting facility for Boresha's coffee and tea products. Plaintiff is a cofounder of Boresha, as well as a former employee, director, and officer. He is also a former director and officer of Virtues and Manifest. Plaintiff owns 500,000 shares of Manifest's common stock.

In July 2013, plaintiff initiated writ proceedings against the Manifest Parties to obtain corporate, financial, and employment records. He obtained an order against the Manifest Parties in January 2014. In order to settle the writ petition and resulting order, the parties entered into a settlement agreement in May 2014. Under the terms of the agreement, plaintiff agreed to sell his Manifest shares to Manifest for the sum of \$900,000, and to execute a noncompetition and nonsolicitation agreement. By the closing date, June 2, 2014, Manifest was to make a down payment of \$200,000: \$111,000 to plaintiff and \$89,000 to plaintiff's attorney. The balance of \$700,000 was to be in the form of a promissory note signed by Manifest and delivered to plaintiff on the closing date. The note was to have a maturity date of 18 months and a 5 percent interest rate.

Manifest subsequently indicated it was having financial difficulties and could not make the \$111,000 down payment to plaintiff by the agreed upon date. The parties agreed to amend the settlement agreement by dividing the down payment. Under the revised agreement, \$50,000 was due on June 6, 2014, and the balance of the down payment was due on June 18, 2014. The parties also agreed to push back the closing date from June 2, 2014 to June 18, 2014. Boresha made the initial \$50,000 payment on June 6, 2014. Manifest claims financial difficulties prevented it from paying the balance on June 18, and it proposed new payment terms but those terms were rejected by plaintiff.

On June 27, 2014, plaintiff filed a motion to enforce the settlement agreement. Attached to the motion was a proposed order, requesting the trial court enter judgment against all three of the Manifest Parties. The Manifest Parties indicated they did not

oppose the motion, but suggested several corrections to the proposed order. Among other things, they argued, “The judgment for all payments sought against the ‘Manifest Parties’ should be corrected to just Manifest, not Boresha or Virtues.” The trial court granted plaintiff’s motion and entered judgment against the Manifest Parties.

## **II. DISCUSSION**

The Manifest Parties argue the trial court erred in entering judgment against Boresha and Virtues because they were not obligated to make any payments to plaintiff under the settlement agreement. We find the agreement is ambiguous on this point and extrinsic evidence indicates all three Manifest Parties are responsible for making payments to plaintiff.

“The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the ‘mutual intention’ of the parties.” (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) “The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” (Civ. Code, § 1638.) “Where the meaning of the words used in a contract is disputed, the trial court must provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning.” (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912.) “If in light of the extrinsic evidence, the court decides the language is ‘reasonably susceptible’ to the interpretation urged, the extrinsic evidence is then admitted to aid in . . . interpreting the contract.” (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) “[W]here . . . the extrinsic evidence is not in conflict, construction of the agreement is a question of law for our independent review.” (*Appleton v. Waessil* (1994) 27 Cal.App.4th 551, 556.) If extrinsic evidence is in conflict and requires resolution of credibility issues, we apply the substantial evidence test. (*Ibid.*)

The Manifest Parties assert the settlement agreement unambiguously states Manifest is the only party obligated to make payments to plaintiff. They point out the recitals section of the agreement indicates plaintiff owned shares of Manifest stock, and that plaintiff agreed to sell those shares back to Manifest, not the Manifest Parties. The

Manifest Parties also rely on the first section of settlement agreement's terms, which is entitled "Settlement Payment and Purchase of Shares by Manifest." That section repeatedly states *Manifest* will, shall, or may pay plaintiff various sums on certain dates, and makes no mention of Boresha or Virtues. While other sections of the agreement refer to the Manifest Parties<sup>2</sup>—which the agreement expressly defines as Manifest, Boresha, and Virtues—the section regarding payment obligations does not. The Manifest Parties argue the terms of the settlement agreement related to payment of the \$900,000 purchase price set forth promises by Manifest to plaintiff, and none of them involve any commitment by any other defendant to make payments.

However, the settlement payment section is silent on whether Boresha and Virtues should be shielded from liability in the event of a default by Manifest. Moreover, other language in the agreement indicates the Manifest Parties were jointly responsible for making payments. Specifically, section 7 of the agreement states that, at the closing date, the Manifest Parties must deliver to plaintiff's counsel, among other things, "A bank check written against good and immediately available funds from Manifest" for the down payment. This language suggests all three of the Manifest Parties are responsible for ensuring payment. Another portion of the agreement states: "The obligations of the Manifest Parties to purchase the Shares, pay the Settlement Payment or otherwise perform their obligations under this Agreement" are subject to the satisfaction of various conditions by plaintiff. At the very least, these provisions create an ambiguity about the scope of Boresha's and Virtues' obligations under the agreement and suggests there is more than one possible meaning to which the agreement is reasonably susceptible. We

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<sup>2</sup> For example, the settlement agreement states plaintiff agreed to refrain from competition with the Manifest Parties, and the Manifest Parties each represent and warrant that execution of the agreement does not require governmental consent or authorization and will not cause a breach of any other agreement. The agreement also states the Manifest Parties are obligated to deliver to plaintiff at closing corporate resolutions, a check written against good and immediately available funds from Manifest, and a pledge agreement executed by Manifest. Additionally, under the agreement, the Manifest Parties executed a mutual release and covenant not to sue.

may consider extrinsic evidence to resolve this ambiguity. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 847.)

The extrinsic evidence in the record supports plaintiff's contention that all three of the Manifest Parties were obligated to make payments. The initial \$50,000 payment to plaintiff was drawn from Boresha's banking account, indicating the Manifest Parties understood Boresha also had a payment obligation under the agreement. The record also shows almost all of Manifest's assets are derived from Boresha, and Manifest itself earned no income during the relevant period. As part of the settlement agreement, the Manifest Parties warranted Manifest "ha[d] the financial ability to make all required payments with good funds as required by th[e] Agreement." In light of the financial statements in the record, it is reasonable to assume the parties understood these good funds would come from Boresha.<sup>3</sup>

### III. DISPOSITION

The judgment is affirmed. Plaintiff shall recover his costs on appeal.

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Margulies, J.

We concur:

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Humes, P.J.

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Banke, J.

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<sup>3</sup> We also observe that if, as the Manifest Parties suggest, Boresha and Virtues have no real obligations under the settlement agreement, it is unclear how they provided consideration for plaintiff's promise to release his claims against them and to execute a noncompetition agreement.